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A. Gallagher
Proc. L

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-185302

DATE: January 26, 1977

MATTER OF: Recommendation Concerning Defense Supply Agency Contract No. DSA100-76-C-1280

DIGEST: Where GAO recommended that agency examine feasibility of terminating improperly awarded contract for convenience of Government, agency's response establishes grounds for position that award should not be disturbed due to urgency of supply situation. Therefore, notwithstanding doubts concerning methodology used by contracting officer in arriving at termination for convenience cost estimate, considering all circumstances of case GAO cannot conclude that recommending termination for convenience would be in best interests of Government.

In Society Brand, Inc. Request for Reconsideration, B-185302, August 30, 1976, 55 Comp. Gen. 1412 (1976), 76-2 CPD 202, our Office recommended that the Defense Supply Agency (DSA) examine the current feasibility of terminating for the convenience of the Government contract No. DSA100-76-C-1280, which was awarded to Proper International, Inc. (Propper), under invitation for bids (IFB) No. DSA100-76-B-0033. In an earlier decision we had concluded that Propper was not eligible for an award under the IFB (Propper International, Inc., et al., B-185302, June 23, 1976, 55 Comp. Gen. 1188 (1976), 76-1 CPD 400).

DSA responded to our recommendation by letter to our Office dated September 28, 1976. DSA maintained that it would not be in the best interests of the Government to terminate Propper's contract in light of (1) the costs which would be involved (an estimated \$588,782 in relation to a total contract price of \$1,317,840), and (2) the continuing urgency of the supply situation in regard to the service caps being furnished under the contract (which would be exacerbated by the delays attendant to making award to a new contractor).

The interested parties were provided with an opportunity to comment on DSA's position. The bidder which apparently would be in line for an award after a termination, Society Brand, Inc., did not comment. The bidder next in line, Bancroft Cap Company, Inc. (Bancroft), contests DSA's views.

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Bancroft points out that a new solicitation was recently issued for the same type of item. However, DSA responds that the quantities called for in the new procurement are in addition to quantities being obtained under the subject contract. Bancroft further contests DSA's view that termination and reward would result in production delays. DSA stands by its position that transfer of cut Government-furnished cloth to a new contractor is not considered feasible based upon past experience in similar situations, and that production delays could be expected to result. DSA also points out that even without any further delays, the supply urgency for the service caps will exist until at least February 1977.

Bancroft also suggests our Office should recommend that Proper's contract be terminated for default because of alleged delivery delays. DSA responds that the contracting officer is not disposed to take such action. In this regard, our Office has indicated that we will not become involved in considering whether to recommend a termination for default in situations of this kind. See Corbetta Construction Company of Illinois, Inc., 55 Comp. Gen. 972 (1976), 76-1 CPD 240.

Finally, Bancroft contends that DSA's termination cost estimate is primitive, since it is based merely on the application of a percentage factor to the contract price of the undelivered quantities. In this regard, DSA concedes that the submission and analysis of cost data would produce a more precise estimate. However, DSA suggests that, for the purposes involved here, the judgment of an experienced contracting officer in making the estimate should be given weight by our Office in reaching a decision whether to recommend a termination for convenience. While we agree that the judgment of an experienced contracting officer should be accorded weight, we share Bancroft's doubts concerning the methodology employed in arriving at the termination estimate in this case. We believe that the record in a case of this kind should contain more substantiation of the factual grounds upon which the contracting officer's judgment is based than is present in the record before us.

However, notwithstanding our doubts concerning the termination cost estimate, we believe that DSA has established grounds for not disturbing the award due to the urgency of the supply situation.

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Considering all the circumstances, we cannot conclude that recommending termination for convenience of Propper's contract would be in the best interests of the Government. Accordingly, our Office is closing its file in this matter without further action.

R. F. Kistner
Deputy Comptroller General
of the United States